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No. 08-274

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

PORT AUTHORITY POLICE
BENEVOLENT ASSOCIATION, INC.,
Petitioner,

v.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 28 U.S.C. § 1257(a) is a basis for jurisdiction when the federal question raised was not pressed or passed upon in the state court.

2. Whether, the New Jersey Supreme Court correctly held that, pursuant to the Instruction governing labor relations at The Port Authority of New York and New Jersey, the redeployment of Port Authority police officers occasioned by a 1997 lease of the international terminal at JFK Airport was exempt from any collective bargaining requirement.

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BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Port Authority of New York and New Jersey respectfully requests that the Court deny the petition for a writ of certiorari of the Port Authority Police Benevolent Association, Inc. to review the decision and judgment of the Supreme Court of New Jersey in *In the Matter of the Alleged Improper Practice under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction; IP 97-28, Final Decision and Order of the Port Authority Employment Relations Panel; Port Authority of New York and New Jersey v. Port Authority Employment Relations Panel and Port Authority Police Benevolent Association,*

Inc., Docket No. A-6 September Term. This case is reported at *In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction*, 194 N.J. 314, 944 A.2d 611, (2008) Petition for Certiorari Filed, 77 USLW 3107 (August 28, 2008) (No. 08-274).

JURISDICTION

Respondent respectfully submits that Petitioner's reliance on 28 U.S.C. § 1257(a) for jurisdiction is misplaced because the federal question asserted was not pressed or passed upon in the state court and petitioner is precluded from pressing it now. Further, the petition fails to meet the Rule 14.1(g)(1) requirement that a certiorari petition seeking review of a state court judgment must specify from the record of proceedings when and how the federal questions were raised and the way in which the state courts passed on those questions. Respondent respectfully submits that in light of the above, 28 U.S.C. § 1257(a) does not provide jurisdiction in this matter.

STATEMENT OF THE CASE

Petitioner's contention that the New Jersey Supreme Court was required but failed to apply the deferential standard of review reflected by federal law in its review of the decision of the Port Authority Labor Relations Panel and that application of federal law would have changed the outcome fails for two reasons. First, the federal question was not pressed or passed upon in the state court and petitioner is precluded from pressing it now. Second, the New Jersey Supreme Court, applied a deferential standard of review consistent with New York and federal law.

A review of the unique nature of The Port Authority of New York and New Jersey (Port Authority) and the framework for resolving labor disputes is necessary to appreciate the issues in dispute. The Port Authority was created on April 30, 1921 by a Compact between the States of New York and New Jersey, which was approved by the Sixty-Seventh Congress of the United States. The Compact established the Port Authority as a joint and common agency of the States of New York and New Jersey. *N.J.S.A.* 32:1-1; *N.Y. Unconsol. Laws*, Section 6401 (McKinney 1979). The Port Authority consists of 12 commissioners, six from each state. The Commissioners are appointed by their respective state governors and the governor of each state has the power to veto the actions of the commissioners appointed from his state. *N.J.S.A.* 32:1-17; *N.Y. Unconsol. Laws*, Section 7151 *et seq.* (McKinney 1979).

The Compact grants broad discretion to The Port Authority Board of Commissioners with regard to appointing officers and employees and in fixing and determining their qualifications and duties. The Compact states:

> The Port Authority . . . may appoint such officers and employees as it may require for the performance of its duties, and shall fix and determine their qualifications and duties.

N.J.S.A 32:1-15 and *N.Y. Unconsol. Laws*, Section 6408 (McKinney 1979).

As a Compact Clause entity, the Port Authority is not subject to unilateral state legislation of either New Jersey or New York. State legislation must be passed concurrently by both states to be directly ap-

plicable to the Port Authority. *See N.J.S.A.* 32:1-8 and *N.Y. Unconsol. Laws* Section 6408 (McKinney 1979). Accordingly, neither the New Jersey Public Employment Relations Commission (PERC) nor the New York Public Employment Relations Board (PERB) has jurisdiction over the Port Authority and neither the *New Jersey Public Employer-Employee Relations Act, N.J.S.A.* 34:13A-1 *et seq.* nor the *New York Pubic Employee's Fair Employment Act, N.Y. Civil Service Law*, § 200 *et seq.* (McKinney 1983) is applicable to the Port Authority. *See Delaware River and Bay Auth. v. New Jersey Pub. Employment Relations Comm'n.*, 112 N.J. Super. 160 (App. Div. 1970), *aff'd*, 58 N.J. 388 (1971).

In light of the inapplicability of single state legislation to the Port Authority, the Port Authority's Board of Commissioners promulgated a Labor Relations Instruction in order to establish a framework for negotiations between the Port Authority and its employees. The action of the Board of Commissioners in promulgating the Instruction and the principles set forth therein were reviewed and approved by the Governors of both New York and New Jersey pursuant to *N.J.S.A.* 32:2-9 and *N.Y. Unconsol.* Section 7153 (McKinney 1979). Through the Instruction, the Port Authority Board of Commissioners set forth the guiding principles to govern the Port Authority's labor relations and appointed a panel, known as the Port Authority Employment Relations Panel ("Panel"), to resolve certain disputes between the Port Authority and its employee organizations. The Panel consists of three members. In recognition of the agency's bi-state nature, one member of the Panel is appointed subject to the written recommendation of the Chairman of the New Jersey Public Employment Relations Commission. Another

member is appointed subject to the written recommendation of the Chairman of the New York Public Employment Relations Board. The third member, the Chairman of the Panel, is appointed subject to the written joint recommendation of the Chairman of the New Jersey Public Employment Relations Commission and the Chairman of the New York Public Employment Relations Board. The Legislatures of New York and New Jersey sanctioned the Labor Relations Instruction and the principles and standards set forth therein when they enacted concurrent legislation supplementing the Compact permitting the enforcement and/or review of Orders of the Panel pursuant to *N.J.S.A.* 32:1-175 and *N.Y. Unconsol. Laws*, Section 7141 (McKinney Supp. 1991).

The guiding principles established by the Port Authority Board of Commissioners and set forth in the Port Authority Labor Relations Instruction that were interpreted and applied by the New Jersey Supreme Court provides:

> In all matters relating to this Instruction, including determinations as to mandatory and non-mandatory subjects of negotiation, Panel members and other persons appointed by the Panel shall be guided but not bound by administrative and judicial interpretations of the public sector labor law of these states of New York and New Jersey. Notwithstanding the foregoing, the mission and management responsibilities of the Authority, including its organization, staffing, planning, operating and financial policies, shall not be subject to negotiation with employee organizations.

(Port Authority Labor Relations Instruction, Section III, D (emphasis added)).

Despite the clear and unambiguous language used in the Port Authority Labor Relations Instruction, the principle that the "mission and management responsibilities of the Authority, including its organization, staffing, planning, operating and financial policies, shall not be subject to negotiation with employee organizations" became the center of the dispute between the Port Authority and the Port Authority Police Benevolent Association when the Port Authority decided to privatize the international terminal at JFK Airport.

In 1994, the Port Authority began a process to determine whether to modernize or replace the international terminal at JFK Airport. Among the proposals considered was the solicitation of private investors to construct, operate and maintain the terminal. The following year, the Port Authority solicited and received four proposals from the private sector. In 1997, it accepted a proposal from JFK International Air Terminal LLC (JFKIAT), a limited liability company comprised of three separate business interests: the developer responsible for the construction of the new terminal, the operator responsible for the operation of the completed terminal, and the financing source responsible for the financing of the new terminal. JFKIAT's proposal provided for the construction of a new international terminal at a cost of $1.2 billion. The Port Authority and JFKIAT then entered into an comprehensive lease that outlined each party's obligations.

Approximately one month before entering into the lease with JFKIAT, the Port Authority met with the PBA, explained the lease proposal for the interna-

tional terminal at JFK Airport, and assured the PBA that "no Port Authority Police Officers would be displaced from JFK Airport nor suffer any negative impact as a result of" the lease. Those assurances were followed by a Port Authority memorandum dated May 12, 1997 that advised that, effective at noon the following day, JFKIAT would "assume responsibility for the [international terminal, and that] police services commensurate with that provided other unit terminals at JFK will be maintained[, and that f]rontage management of pedestrians and vehicles will become the responsibility of [JFKIAT]."

The lease became effective on May 13, 1997 and, from that date forward, JFKIAT assumed all security functions at JFK Airport's international terminal. Although those events required the redeployment of the Port Authority police officers formerly assigned to the international terminal, no police officer lost his or her job; the sole record evidence of any possible impact on the police officers was the unsubstantiated opinion of the chief of the Port Authority police department that, "by redeploying [Port] Authority Police Officers, he was 'certain' that their overtime was reduced."

Six weeks later, the PBA protested. In a letter dated June 24, 1997 and addressed to the Port Authority's director of human resources, the PBA set forth its view that "the Port Authority Labor Relations Instruction and the Memorandum of Agreement between the Port Authority and [the PBA] forbid this unilateral action by the Port Authority." It also asserted that, "without prejudice to [its] right to file an improper practice or grievance[, the] PBA requests immediate negotiations regarding the impact of this decision upon our members[,]" explaining that "[t]he PBA will take appropriate action thereafter." On

July 2, 1997, the Port Authority responded, rejecting any claim that the Port Authority had acted improperly, but expressing a willingness to discuss the PBA's concerns "as part of overall negotiations." The PBA did not respond to that invitation. Instead, on July 28, 1997, the PBA filed its improper practice charge against the Port Authority.

The PBA's improper practice charge specifically alleged:

> [T]he Port Authority has either hired, subcontracted, permitted or suffered non-unit personnel to perform PBA unit work. Civilian personnel are directing and controlling traffic and are performing security functions at sites at or near the [international terminal,] which functions have traditionally and historically been performed by the PBA. This action was taken by the employer without any prior negotiation with the PBA in violation of the Labor Relations Instruction and the Memorandum of Agreement.

Notwithstanding the clear language, the Port Authority Employment Relations Panel rejected the conclusions of a Hearing Officer that it had assigned to hear the matter and, contrary to the Hearing Officer's recommendation, ruled in favor of the PBA on its improper practice charge. The Panel concluded "the Port Authority violated the Instruction when it transferred PBA unit work to non-unit employees without negotiating with the PBA".

In its analysis, the Supreme Court of New Jersey fully reviewed the "special legal status" of the Port Authority and the guiding principles for labor relations established by the Port Authority Board of Commissioners and appropriately found that the

Panel's conclusion ignored the limiting language of the Port Authority Labor Relation Instruction and vacated the Panel's decision. It noted:

> In 1976, the Port Authority adopted its Labor Relations Instruction. Among other things, the Instruction (1) safeguarded the right to collectively bargain via employee organizations for Port Authority non-managerial employees; (2) created the Panel to administer disputes between the Port Authority and its employee organizations; (3) established procedures for the processing of those disputes; and (4) provided for judicial review of any decisions of the Panel. The grant of authority to the Panel was subject to a significant exemption: Section III(D) of the Instruction specifically provides that **"[n]otwithstanding the foregoing, the mission and management responsibilities of the [Port] Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations."**

In RE alleged Improper Practice, supra at 320, 944 A.2d 6. (Emphasis added).

As to Petitioner's contention that the New Jersey Supreme Court failed to correctly apply a deferential standard of review, a cursory review of the decision demonstrates that the Court applied a highly deferential standard of review. In this regard, the Court stated:

> We underscored that "[a]n administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it

lacks fair support in the record." *Id.* at 27-28, 926 A.2d 350 (citing *Campbell v. Dep't of Civil Serv.*, 39 N.J. 556, 562, 189 A.2d 712 (1963)). We cautioned that "[t]hree channels of inquiry inform the appellate review function:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
>
> [*Id.* at 28, 926 A.2d 350 (quoting *Mazza v. Bd. of Trs.*, 143 N.J. 22, 25, 667 A.2d 1052 (1995)).]

Thus, "[w]hen an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." Ibid. (citations omitted). Judicial respect for proper administrative agency action runs deep: "Deference controls even if the court would have reached a different result in the first instance." Ibid. (citing *In re Taylor*, 158 N.J. 644, 657, 731 A.2d 35 (1999)).

Id. 331-332, 944 A.2d 622.

Also contrary to Petitioner's assertion, the New Jersey Supreme Court never "rejected" the New York standard of review. The opposite is true.[1] The Court

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[1] In this regard, the Port Authority Labor Instruction provides:

expressly noted that both New York and New Jersey apply a deferential standard of review. Requiring an agency to respect the limitations placed on its authority is entirely consistent with New York and federal standards of review. For instance, in *Industrial Liaison Committee of Niagara Falls Area Chamber of Commerce v Williams*, 72 N.Y.2d 137, 531 N.Y.S.2d 791, 527 N.E.2d 274, the New York Court of Appeals held that the courts should use their own competence to decide issues of law raised by an agency's compliance with the provisions of the State Administrative Procedure Act in promulgating regulations, and should defer to the agency's special expertise only where such expertise is relevant. *See also*, *Hamburg v McBarnette*, 83 N.Y.2d 726, 613 N.Y.S.2d 355, 635 N.E.2d 1225 (1994), holding that the court would not defer to the State Department of Health's interpretation of its regulations regarding reimbursement for local public health services where the department essentially repeated the statutory language.

As for federal law, the *Administrative Procedure Act* (APA), 5 U.S.C. § 706 (2000), similarly provides that a court will set aside an agency action if it finds that the action exceeds the authority granted, or violates limitations imposed, by a federal statute. *See* APA § 706(2)(C) "The reviewing court shall . . . (2) hold unlawful and set aside agency action, findings, and conclusions found to be . . . (C) in excess of

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> In all matters relating to this Instruction, including determinations as to mandatory and non-mandatory subjects of negotiation, Panel members and other persons appointed by the Panel shall be guided but not bound by administrative and judicial interpretations of the public sector labor law of the states of New York and New Jersey.

Instruction, Section III, Paragraph D.

statutory jurisdiction, authority, or limitations, or short of statutory right."

Notwithstanding the application of a deferential standard of review, the New Jersey Supreme Court concluded:

> The application of this standard of review informs our conclusion that the Panel's determination that "the Port Authority violated the Instruction when it transferred PBA unit work to non-unit employees without negotiating with the PBA" is not entitled to any special deference and should be rejected. This is because the Panel neither followed the law nor relied on any particularized expertise in reaching its conclusion. In specific, the same organic document that created the Panel – the Instruction – also limits its jurisdiction. In clear and explicit terms, the Instruction states that "the mission and management responsibilities of the [Port] Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations." (Emphasis supplied). The lease arrangement in respect of the international terminal delegated to the lessee all of the Port Authority's obligations under its lease with the City of New York and, hence, relieved the Port Authority from the day-to-day operational responsibility for that terminal. For that reason, the Port Authority's plan to lease to a private party the whole of the international terminal directly implicated "its organization, staffing, planning, operating and financial policies," a plan that, prior to its implementation, was presented to and approved by the Port Authority's Board and, by the submission and

> approval of its minutes, by the Governors of both New Jersey and New York. Furthermore, the Panel's decision hinged solely and exclusively on its interpretation of the lease between the Port Authority and JFKIAT, a matter that does not reside within the Panel's unique area of competence. When gauged in the aggregate, then, the Panel's determination must be rejected.

Id. at 332-333, 944 A.2d 622-623. The analysis of the New Jersey Supreme Court was consistent with New York and federal law and the Petition should be denied.

REASONS FOR DENYING THE PETITION

A. Petitioner's Reliance on 28 U.S.C. §1257(a) as a Basis For Jurisdiction Is Misplaced Because Any Federal Question Raised Asserted Here Was Not Pressed or Passed Upon By the State Court

The petition asks the Court to determine whether the Port Authority Labor Relations Instruction, an Instruction adopted by the Port Authority is subject to review under federal law and, if so, whether the Supreme Court of New Jersey erred by applying New Jersey authority instead of federal law when reviewing the Panel decision.

Respondent submits that this does not raise a federal question, but if it did, Rule 14.1(g)(i) requires a certiorari petition seeking review of a state court judgment to specify "the stage of the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts." The Rule further requires the certiorari

petition to set forth "pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." *Id.* The petition fails to comply with this rule.

Further, the New Jersey Supreme Court's opinion is silent on the application of the federal standard petitioners contend should have been applied. "[W]hen the highest state court fails or refuses to pass expressly upon a federal question, the party evoking the Supreme Court's jurisdiction has the high burden of showing that the federal question was in fact properly raised, so that the state court's failure to deal with it was not for want of proper presentation. *See Campbell v. Louisiana,* 523 U.S. 392, 403, 523 U.S. 392, 118 S.Ct. 1419 (1998).

In *Adams v. Robertson,* 520 U.S. 83, 86, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997) (*per curiam*), this Court made it clear that:

> With "very rare exceptions," *Yee v. Escondido,* 503 U.S. 519, 533, 112 S.Ct. 1522, 1531, 118 L.Ed.2d 153 (1992), we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

In the instant case, the federal issue raised in the certiorari petition was not pressed or passed upon before the New Jersey Supreme Court and the petition must, therefore, be denied.

B. The Supreme Court of New Jersey Applied a Deferential Standard of Review and Correctly Held That The Port Authority's Decision To Sublease Operational Control and Management of the International Terminal at John F. Kennedy International Airport Directly Implicated the Port Authority's Management and Operating Policies And Therefore, Pursuant to the Principles Established By The Port Authority Labor Relations Instruction, Collective Bargaining Was Not Required

The contention that the petition for certiorari should be granted because the New Jersey Supreme Court was required, but failed, to apply the federal standard of review in its review of the decision of the Port Authority Labor Relations Panel and that application of federal law would have changed the outcome fails. The New Jersey Supreme Court, in fact, applied a highly deferential standard of review.

In reviewing the decision of the Port Authority Labor Relations Panel, the Supreme Court of New Jersey succinctly stated the issue presented as follows:

> [W]hether the May 1997 lease of the international terminal at John F. Kennedy International Airport (JFK Airport)-and the resulting redeployment, without any job losses or terminations, of Port Authority police officers to other portions of the JFK Airport-gave rise to an obligation on the

> part of the Port Authority to collectively bargain that redeployment with the PBA.

In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction, 194 N.J. 314, 317, 944 A.2d 611, 613 (2008).

The Court recognized the "special legal status" of the Port Authority and the guiding principles for labor relations established by the Port Authority Board of Commissioners, stating:

> In 1976, the Port Authority adopted its Labor Relations Instruction. Among other things, the Instruction (1) safeguarded the right to collectively bargain via employee organizations for Port Authority non-managerial employees; (2) created the Panel to administer disputes between the Port Authority and its employee organizations; (3) established procedures for the processing of those disputes; and (4) provided for judicial review of any decisions of the Panel. The grant of authority to the Panel was subject to a significant exemption: Section III(D) of the Instruction specifically provides that **"[n]otwithstanding the foregoing, the mission and management responsibilities of the [Port] Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations."** (Emphasis supplied.)

Id. at 319-320, 944 A.2d 615.

Contrary to the Petitioner's assertion, the New Jersey Supreme Court in its analysis of the Panel's decision applied a highly deferential standard of review applicable to administrative agencies stating:

> We underscored that "[a]n administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." *Id.* at 27-28, 926 A.2d 350 (citing *Campbell v. Dep't of Civil Serv.*, 39 N.J. 556, 562, 189 A.2d 712 (1963)). We cautioned that "[t]hree channels of inquiry inform the appellate review function:
>
> > (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
> >
> > [*Id.* at 28, 926 A.2d 350 (quoting *Mazza v. Bd. of Trs.*, 143 N.J. 22, 25, 667 A.2d 1052 (1995)).]
>
> Thus, "[w]hen an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." Ibid. (citations omitted). Judicial respect for proper administrative agency action runs deep: "Deference controls even if the court would have reached a different result in the first instance." Ibid. (citing *In re Taylor*, 158 N.J. 644, 657, 731 A.2d 35 (1999)).

Id. 331-332, 944 A.2d 622. Also contrary to Petitioner's assertion, the New Jersey Supreme Court never "rejected" the New York standard of review.

The opposite is true.[2] The Court noted that both New York and New Jersey apply a deferential standard of review.

Notwithstanding the application of a deferential standard of review, the New Jersey Supreme Court concluded:

> The application of this standard of review informs our conclusion that the Panel's determination that "the Port Authority violated the Instruction when it transferred PBA unit work to non-unit employees without negotiating with the PBA" is not entitled to any special deference and should be rejected. This is because the Panel neither followed the law nor relied on any particularized expertise in reaching its conclusion. In specific, the same organic document that created the Panel – the Instruction – also limits its jurisdiction. In clear and explicit terms, the Instruction states that "the mission and management responsibilities of the [Port] Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations." (Emphasis supplied). The lease arrangement in respect of the international terminal delegated to the lessee all of the Port Authority's obligations

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[2] In this regard, the Port Authority Labor Instruction provides:

> In all matters relating to this Instruction, including determinations as to mandatory and non-mandatory subjects of negotiation, Panel members and other persons appointed by the Panel shall be guided but not bound by administrative and judicial interpretations of the public sector labor law of the states of New York and New Jersey.

Instruction, Section III, Paragraph D.

> under its lease with the City of New York and, hence, relieved the Port Authority from the day-to-day operational responsibility for that terminal. For that reason, the Port Authority's plan to lease to a private party the whole of the international terminal directly implicated "its organization, staffing, planning, operating and financial policies," a plan that, prior to its implementation, was presented to and approved by the Port Authority's Board and, by the submission and approval of its minutes, by the Governors of both New Jersey and New York. Furthermore, the Panel's decision hinged solely and exclusively on its interpretation of the lease between the Port Authority and JFKIAT, a matter that does not reside within the Panel's unique area of competence. When gauged in the aggregate, then, the Panel's determination must be rejected.

Id. 332-333, 944 A.2d 622-623.

Reversing a determination of an administrative agency where, as here, it ignores the limitations set forth of its enabling authority is not contrary to New York or federal law as Petitioner asserts. To the contrary, it is in conformance with it. Thus, in *Industrial Liaison Committee of Niagara Falls Area Chamber of Commerce v Williams*, 72 N.Y.2d 137, 531 N.Y.S.2d 791, 527 N.E.2d 274, the New York Court of Appeals held that the courts should use their own competence to decide issues of law raised by an agency's compliance with the provisions of the State Administrative Procedure Act in promulgating regulations, and should defer to the agency's special expertise only where such expertise is relevant. See also, *Hamburg v McBarnette*, 83 N.Y.2d 726, 613 N.Y.S.2d 355, 635 N.E.2d 1225 (1994), holding that the court would not

defer to the State Department of Health's interpretation of its regulations regarding reimbursement for local public health services where the department essentially repeated the statutory language. Similarly, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706, a court will set aside an agency action if it finds that the action exceeds the authority granted, or violates limitations imposed, by a federal statute. *See* APA § 706(2)(C) "The reviewing court shall . . . (2) hold unlawful and set aside agency action, findings, and conclusions found to . . . (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

Pursuant to and in conformance with these principles, the Supreme Court of New Jersey properly held:

> [P]ursuant to the Instruction governing labor relations at the Port Authority, the redeployment of Port Authority police officers occasioned by the 1997 lease of the international terminal at JFK Airport was exempt from any collective bargaining requirement. We further conclude that, even if the Port Authority was required to collectively bargain the effects of the 1997 lease of the international terminal at JFK Airport, and even if the work on the leased premises may well have constituted "unit work," the Port Authority was not obligated to collectively bargain its transfer in any event.

Id. at 319, 944 A.2d 614.

Application of well-accepted principles of jurisprudence reflected in the laws of New Jersey, New York and the United States support the conclusions of the New Jersey Supreme Court and the petition should be denied.

CONCLUSION

The petition for the writ of certiorari should be denied.

Respectfully submitted,

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